

## APPENDIX

## STATUTES CITED

PAGE

(Note. C.S. refers to the Consolidated Statutes of North Carolina. Only portions of the statutes pertinent and applicable to the instant case are quoted.)

C.S. 109. *Final accounts*.—An executor or administrator may be required to file his final account for settlement in the office of the clerk of the Superior Court by a citation directed to him, at any time after two years from his qualification, at the instance of any person interested in the estate, but such account may be filed voluntarily at any time; and, whether the accounting be voluntary or compulsory, it shall be audited and recorded by the clerk. (Rev., s. 103; Code, s. 1402; C. C. P., s. 481.) ..... 17

C.S. 147. *Legacy or distributive share recoverable after two years*.—Legacies and distributive shares may be recovered from an executor, administrator or collector by petition preferred in the Superior Court, at any time after the lapse of two years from his qualification, unless the executor, administrator or collector shall sooner file his final account for settlement. The suit shall be commenced and the proceeding therein conducted as prescribed in other cases of special proceedings. (Rev., s. 144; Code, s. 1510; 1868-9, c. 113, s. 83.) ..... 17

C.S. 150. *Representative must settle after two years*.—No executor, administrator, or collector, after two years from his qualification, shall hold or retain in his hands more of the deceased's estate than amounts to his necessary charges and disbursements and such

debts as he shall legally pay; but all such estate so remaining shall, immediately after the expiration of two years, be divided and be delivered and paid to the person to whom the same may be due by law or the will of the deceased; and the clerk of the Superior Court in each county shall require settlement of the balance in hand due distributees as shown by the final account of any administrator, executor, or guardian, and shall audit same: Provided, that the several clerks of the Superior Courts of this State may, in their discretion, for good cause shown, extend the time for the final settlement of any administrator or executor; provided, that nothing herein contained shall relieve any such administrator or executor of the duty of administering and distributing such funds and property in his hands as may be available for such purposes; provided, further, that any party having an interest in any such estate may, within ten days from the entry of an order extending the time for final settlement, appeal from such order to the resident or presiding judge of the district, which appeal shall be heard as is now or may hereafter be prescribed by law for the hearing of other appeals from the clerk. (Rev., s. 147; Code, s. 1488; 1868-9, c. 113, s. 59; 1919, c. 69; 1933, c. 188; 1935, c. 377.) ..... 17

C.S. 441. *Three years.*—*Within three years an action*—1. Upon a contract, obligation or liability arising out of a contract, express or implied, except those mentioned in the preceding sections.

2. Upon a liability created by statute, other than a penalty or forfeiture, unless some other time is mentioned in the statute creating it.

3. For trespass upon real property. When the trespass is a continuing one, the action shall be commenced

within three years from the original trespass, and not thereafter.

4. For taking, detaining, converting or injuring any goods or chattels, including action for their specific recovery.

5. For criminal conversation, or for any other injury to the person or rights of another, not arising in contract and not hereinafter enumerated.

6. Against the sureties of any executor, administrator, collector or guardian on the official bond of their principal; within three years after the breach thereof complained of.

7. Against bail; within three years after judgment against the principal; but bail may discharge himself by a surrender of the principal, at any time before final judgment against the bail.

8. For fees due to a clerk, sheriff or other officer, by the judgment of a court; within three years from the rendition of the judgment, or the issuing of the last execution thereon.

9. For relief on the ground of fraud or mistake; the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

10. For the recovery of real property sold for the nonpayment of taxes, within three years after the execution of the sheriff's deed. (Rev., s. 395, Code, s. 155; C. C. P., s. 34; 1895, c. 165; 1889, cc. 269, 218; 1899, c. 15, s. 71; 1901, c. 558, s. 23; 1913, c. 147, s. 4.) . . . . . 19

C.S. 445. *All other actions, ten years.*—An action for relief not herein provided for must be commenced

within ten years after the cause of action has accrued.  
(Rev., s. 399; Code, s. 158; C. C. P., s. 37.) . . . . . 18

C.S. 1864(e). *Definition of terms.*—

2. A thing is done “in good faith” within the meaning of this law when it is in fact done honestly, whether it be done negligently or not. (1923, c. 85, s. 1.) . . . . 15, 20

C. S. 1864(f). *Application of payments made to fiduciaries.*—A person who in good faith pays or transfers to a fiduciary any money or other property which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of such payment or transfer is not invalid in consequence of a misapplication by the fiduciary (1923, c. 85, s. 2) . . . . . 15, 20

C. S. 1864(g). *Registration of transfer of securities held by fiduciaries.*—If a fiduciary in whose name are registered any shares of stock, bonds or other securities of any corporation, public or private, or company or other association, or of any trust, transfers the same, such corporation or company or other association, or any of the managers of the trust, or its or their transfer agent, is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in making the transfer, or to see to the performance of the fiduciary obligation, and is liable for registering such transfer only when registration of the transfer is made with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making the transfer, or with knowledge of such facts that the action in registering the transfer amounts to bad faith (1923, c. 85, s. 3) . . . . . 15, 20

C. S. 3568. *Trustees may be appointed and removed.*—The conference, synod, convention or other

ecclesiastical body representing any church or religious denomination within the state, as also the religious societies and congregations within the state, may from time to time and at any time appoint in such manner as such body, society or congregation may deem proper, a suitable number of persons as trustees for such church, denomination, religious society, or congregation. The body appointing may remove such trustees or any of them, and fill all vacancies caused by death or otherwise (Rev., ss. 2670, 2671; Code, ss. 3667, 3668; R. C., c. 97; 1796, c. 457, ss. 1, 2; 1844, c. 47; 1848, c. 76) ..... 9

C. S. 3569. *Trustees may hold property.*—The trustees and their successors have power to receive donations, and to purchase, take and hold property, real and personal, in trust for such church or denomination, religious society or congregation; and they may sue or be sued in all proper actions, for or on account of the donations and property so held or claimed by them, and for and on account of any matters relating thereto. They shall be accountable to the churches, denominations, societies and congregations for the use and management of such property, and shall surrender it to any person authorized to demand it (Rev., ss. 2670, 2671; Code, ss. 3667, 3668; R. C., c. 97; 1796, c. 457, ss. 1, 3; 1844, c. 47; 1848, c. 76) ..... 9

C. S. 3570. *Title to lands vested in trustees or in societies.*—All glebes, lands and tenements, heretofore purchased, given, or devised for the support of any particular ministry, or mode of worship, and all churches and other houses built for the purpose of public worship, and all lands and donations of any kind of property or estate that have been or may be given, granted or devised to any church or religious

denomination, religious society or congregation within the state for their respective use, shall be and remain forever to the use and occupancy of that church or denomination, society or congregation for which the glebes, lands, tenements, property and estate were so purchased, given, granted or devised, or for which such churches, chapels or other houses of public worship were built; and the estate therein shall be deemed and held to be absolutely vested as between the parties thereto, in the trustees respectively of such churches, denominations, societies and congregations, for their several use, according to the intent expressed in the conveyance, gift, grant or will; and in case there shall be no trustees, then in such churches, denominations, societies and congregations, respectively, according to such intent (Rev., s. 2672; Code, s. 3665; R. C., c. 97, s. 1; 1776, c. 107; 1796, c. 457, s. 4)..... 9, 11

C. S. 3571. *Trustees may convey property.*—The trustees of any religious body may mortgage or sell and convey in fee simple any land owned by such body, when directed so to do by such church, congregation, society or denomination, or its committee, board or body having charge of its finances, and all such conveyances so made or heretofore made, or hereafter to be made, shall be effective to pass the land in fee simple to the purchaser or to the mortgagee for the purposes in such conveyances or mortgage expressed; and they may sell or mortgage its personal property (Rev., s. 2673; 1855, c. 384; 1889, c. 484)..... 9